Supreme Court, U. S.
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In The
Supreme Court Of The United States

OCTOBER TERM, 1979

NO. 79-274

ROBERT MOYE, *Petitioner*

v.

STATE OF CONNECTICUT, *Respondent*

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

RESPONDENT
STATE OF CONNECTICUT

ERNEST J. DIETTE, JR.
Assistant State's Attorney
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REASONS FOR DENYING THE WRIT

Although it cannot be conceded outright that the decision by the Supreme Court of the State of Connecticut, in *State v. Moye*, Conn. (40 Conn. L.J. No. 46, pp.1-10, May 15, 1979), would have been decided differently if the court had h[illegible] the advantage of this Court's decision in *Sandstrom v. Montana*, U.S. , 25 Cr.L.3159, June 18, 1979, there would appear to be at least a reasonable possibility that the court's decision in *State v. Moye*, supra, would have been different.

The Supreme Court of Connecticut's decision–after *Sandstrom v. Montana*, supra–in *State v. Harrison*, Conn. (41 Conn. L.J. No. 9, pp.3-6. August 28, 1979), readily indicates an awareness by that state court of the *Sandstrom* decision and its applicability, in general, to charges in which the jury is told that "...the law presumes that a person intends the ordinary consequences of his voluntary acts..."

In a footnote (T.N. #5 at p.6), in the *Harrison* decision, the Supreme Court of Connecticut merely mentions, sans further comment, that *State v. Moye* was decided before the court could have known of this Court's decision in *Sandstrom*. The implication is clear that that court might, indeed, have reached a different conclusion in *Moye* if it had known of *Sandstrom*.

This being the case, the issue, then, on this Petition for a Writ of Certiorari, seems to be not whether further action on *Moye* is required but, rather, which court ought to have the initial opportunity to apply *Sandstrom* to the facts in *Moye*.

Since the Supreme Court has already rendered a decision of far reaching implication in *Sandstrom*, petitioner's request that this Court consider the substantially identical issue again, in *Moye*, would seem to

request an effort (akin to "re-inventing the wheel") extremely wasteful of this Court's already over-burdened judicial resources.

The wiser course might be that this Supreme Court summarily refer the *Moye* case back to the Supreme Court of the State of Connecticut in light of the Court's decision in *Sandstrom v. Montana*, supra.

Once the *Moye* case has been returned to the state court for further review, that court could expeditiously proceed to a determination of at least two issues which this Court should not–at this time–be called upon to decide; i.e., (a) the retroactive effect of *Sandstrom* and, (b) a review of the entire charge in *Moye*, in light of the principles enunciated in *Sandstrom*, provided, of course, that the question of "retroactivity" is not decided adversely to petitioner, such that the latter question becomes irrelevant.

A determination in petitioner's favor, at the state court level, would not be the foregone conclusion that petitioner has so facilely declared. For, as this Court has only recently ruled in a similar case, *Kentucky v. Whorton*,____U.S.____, 25 Cr.L. 3082. (May 21, 1979), the charge discussed in *Sandstrom* is not talismanic, and each charge must be read as a whole to determine the extent to which a conclusive presumption or burden-shifting may have occurred.

It should be left to the Supreme Court of the State of Connecticut, however, to perform this balancing-test evaluation in the first instance.

CONCLUSION

On the basis of the foregoing, this Court should deny the Petition for a Writ of Certiorari to the Supreme Court of the State of Connecticut. It may be appropriate, however, to remand this case to the state court for further proceedings in light of *Sandstrom v. Montana*, U.S. (1979).

Respectfully Submitted,

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